

CITY OF SAN JOSÉ, CALIFORNIA
Department of Planning, Building and Code Enforcement
801 North First Street, Room 400
San José, California 95110-1795

Hearing Date/Agenda Number
P.C. 12/10/03 Item. 3.e.

File Number
CP03-072

Application Type
Conditional Use Permit

Council District
3

Planning Area SNI Neighborhood
Central 13th Street

Assessor's Parcel Number(s)
467-20-016

STAFF REPORT

PROJECT DESCRIPTION

Completed by: John Davidson

Location: East side of N. Forth Street, approximately 150 feet north of E. Santa Clara Street.

Gross Acreage: 0.55

Net Acreage: 0.55

Net Density: N/A

Existing Zoning: CG General Commercial

Existing Use: Vacant lot

Proposed Zoning: No change

Proposed Use: 2,000 square foot temporary emergency homeless shelter

GENERAL PLAN

Completed by: JED

Land Use/Transportation Diagram Designation
Public/Quasi-Public

Project Conformance:
☒ Yes ☐ No
☒ See Analysis and Recommendations

SURROUNDING LAND USES AND ZONING

Completed by: JED

North: Commercial (Planned Civic Center Garage)

CG General Commercial

East: Church

R-M Multiple Residence

South: Commercial

CG General Commercial

West: Apartments, Commercial

CG General Commercial

ENVIRONMENTAL STATUS

Completed by: JED

☒ Environmental Impact Report found complete on September 2, 2003.
☐ Negative Declaration circulated on
☐ Negative Declaration adopted on

☐ Exempt
☐ Environmental Review Incomplete

FILE HISTORY

Completed by: JED

Annexation Title: Original City

Date: March 27, 1850

PLANNING DEPARTMENT RECOMMENDATIONS AND ACTION

☒ Approval
☐ Approval with Conditions
☐ Denial

Date: _____
☐ _____

Approved by: _____
☐ Action
☒ Recommendation

OWNER/APPLICANT

City of San Jose Redevelopment Agency
Attn: Lisa Mulvany
50 W. San Fernando Street, Suite 1100
San Jose, CA 95113

PUBLIC AGENCY COMMENTS RECEIVED

Completed by: JED

Department of Public Works
See Conditions of Approval

Other Departments and Agencies
See Conditions of Approval

GENERAL CORRESPONDENCE

None received

ANALYSIS AND RECOMMENDATIONS

BACKGROUND

The applicant, in conjunction with the tenant, the Emergency Housing Consortium (EHC), is requesting a Conditional Use Permit to allow a temporary emergency homeless shelter for teenagers at the subject site. This reason for this application is that the Emergency Housing Consortium's existing shelter at 39 N. Fifth Street is slated for demolition as part of the Civic Center Garage project. The proposed temporary shelter will act as a stopgap until the new EHC facility is completed, which will be located at the northeast corner of E. William and S. Third Streets. The proposed site is located on the east side of N. Fourth Street, approximately 150 north of E. Santa Clara Street, and is zoned CG General Commercial.

The Zoning Ordinance requires a Conditional Use Permit (CUP) for emergency residential shelters in the CG General Commercial Zoning District. The scope of work will also include minor site improvements, including parking and fencing.

Surrounding uses are commercial to the north and south, residential and commercial to the west, and a church to the east. EHC's original shelter, located on S. Fifth Street north of San Fernando Street, was displaced by the new City Hall under construction. Their current temporary shelter is being displaced by the Civic Center Garage project.

GENERAL PLAN CONFORMANCE

The emergency residential shelter use is consistent with the General Plan Land Use Designation of Public/Quasi-Public.

ENVIRONMENTAL REVIEW

Environmental Review for this project is covered by the Civic Center Garage Plan SEIR, approved by the City Council on September 2, 2003, which is EIR Resolution #71732.

ANALYSIS

The primary use issues associated with the proposed project are the compatibility of the proposed emergency homeless shelter with the surrounding neighborhood. In October 1995, the City Council adopted the Emergency Homeless Shelter Criteria Council Policy (attached). The purpose of that Council

Policy is stated in the following way:

The Emergency Homeless Shelter Criteria are designed to provide sufficient opportunities for emergency shelters in broad areas of the City consistent with three main goals: 1) to provide temporary emergency shelter for those who need and desire such shelter, 2) to provide counseling training, and other assistance and services to those who wish to end their homelessness, and 3) to ensure that residents and businesses near emergency homeless shelters are not adversely affected by the size, location, or operation of emergency homeless shelters in San Jose.

The shelter, proposed to be allowed under this permit, already existed at a nearby location, and has been displaced by a City project. The shelter is being moved from its temporary location at 39 N. Fifth Street, directly adjacent to the proposed site. In terms of the overall number of shelters in this area, this displacement does not create a new shelter, but rather temporarily relocates an existing one that provides necessary services for runaway youths.

The applicant has noted that the proposed location of the shelter is important because it is located near services and transit, which makes it possible to serve youth clientele as effectively as possible. The following analysis addresses the size, location, and site design criteria contained in the adopted City Council Policy.

Size Criteria:

“Emergency Homeless shelters should be limited to a maximum size of 125 year-round beds.”

The proposed shelter will have ten beds (the same number as the existing temporary shelter), which is less than one-tenth of the maximum size allowed under the Council Policy.

Location and Site Design Criteria:

1. *“The Council Policy notes that the vast majority of homeless shelters are located within a four square mile area at the center of the City, within Council Districts 3, 4, and 5. The Policy encourages homeless shelters to locate outside of this area, in locations consistent with the policy.”*

The applicant is being displaced by the Civic Center project, and therefore the proposed temporary project does not create a new shelter, but rather relocates an existing one. The applicant has indicated that they need to stay in the Downtown area, in order to serve the homeless youth population present in that area.

2. *“Emergency homeless shelter sites should be located within a reasonable distance or travel time from services and facilities used by the homeless.”*

The applicant has noted that relocating the temporary shelter within the Downtown Core maximize their ability to offer the widest variety of services and facilities for the homeless. The closest light rail station is located within 1,000 feet of the project site. Numerous social service agencies and faith-related charities are located within the Downtown Core.

3. *“Shelter sites should be in areas that are generally safe and that can be characterized as having*

relatively low crime rates as indicated by Police Department beat statistics including emergency calls for service.”

The Downtown Core cannot be characterized as having low crime rates by Police Department statistics. However, given the small size of the shelter, the level of on-site supervision proposed, and the fact that a new shelter is not being created, but rather being moved on the same block from N. 5th Street to N. 4th Street. Therefore, the relocated shelter is not likely to have an adverse impact on crime in the immediate area.

4. *“The size of a shelter site or building should be commensurate with the size of the proposed shelter and adequate to support a variety of space needs for the services to be provided to ensure that the shelter operation will be fully contained on site.”*

The site is adequate in size for the emergency shelter. All activities related to the homeless shelter will be contained on site.

5. *“Sites should have or be able to accommodate adequate parking for shelter vehicles, the personal vehicles of shelter staff, visitors, and the homeless people that have vehicles.”*

The proposal includes nine parking spaces, which is consistent with the requirements of the Zoning Ordinance. The parking is provided under an off-site parking arrangement, which recognizes that the parking will be provided on a separate legal parcel owned by the City of San Jose abutting the proposed emergency shelter site.

6. *“Emergency homeless shelters should not be located within residential areas. The minimum separation between shelter sites and residential areas should generally be 150 feet.”*

The proposed project is located across N. Fourth Street from residential uses. The original EHC shelter location at 26-28 S. Fifth Street was similar in that it was within 150 feet of residential uses yet conflicts between the shelter and residential uses were not reported. On-site supervision and a required shelter management plan will insure compatibility between the proposed use and surrounding residences.

7. *“Emergency homeless shelters should not be located on lands designated Core Area, Research/Development, Administrative Office / Research & Development, or Campus Industrial.”*

The subject site has a General Plan Land Use designation of Public/Quasi-Public, and is not located within any of the above designations.

8. *“Emergency homeless shelters should be located away from schools and parks. The minimum separation between shelter sites and schools or parks should be 500 feet.”*

The proposed location is located more than 500 feet away from both Horace Mann Elementary School and Saint James Park.

9. *“Emergency Homeless shelters should be located so as to minimize the travel routes through residential neighborhoods that may be necessary to get to transit facilities or to other services needed by the homeless.”*

The proposed site is located within the Downtown Core and is located close to a variety of transit options, including light rail. The homeless clientele would not have to walk through residential neighborhoods to reach these transit options.

10. *“The separation between emergency homeless shelters should be adequate to avoid the undue concentration of emergency shelters in any particular area.” The Council Policy goes on to indicate that shelters with less than 25 beds should be separated by at least a quarter-mile.*

The proposed shelter is located approximately 0.45 miles from the nearest homeless housing listed on the City of San Jose map entitled, “Homeless Shelters/Service Providers by Council District”, dated August, 2000. The closest homeless housing provider to the project site is the Salvation Army, located at 405 N. 5th Street.

The Council Policy also indicates that the shelters should establish shelter management plans in conjunction with the required planning permit. The shelter management plan provided by EHC is incorporated in the project conditions for the CUP.

Conclusion

Staff finds the proposed project is in substantial conformance with City Council Policy, Emergency Homeless Shelter Criteria, given the small size of the youth homeless shelter; the fact that project does not create a new shelter but is the relocation of an existing shelter on the same block; and the fact that a downtown location provides the most efficient delivery of services for homeless teens.

PUBLIC OUTREACH

Notice of the Planning Commission hearing was distributed to the owners and tenants of all properties located within 500 feet of the project site. Staff has been available to discuss the project with interested members of the public.

RECOMMENDATION

The Planning staff recommends that the Planning Commission approve the requested Conditional Use Permit and include the following findings and conditions in its resolution.

The Planning Commission finds that the following are the relevant facts regarding this proposed project:

1. This site has a designation of Public/Quasi-Public on the adopted San José 2020 General Plan Land Use/Transportation Diagram.
2. The 0.55-acre project site is located in the CG General Commercial Zoning Districts.
3. The site is currently vacant.
4. Surrounding uses are commercial to the north and south, residential and commercial to the west, and a church to the east.

5. Emergency Residential Shelters are conditional uses in the CG General Commercial Zoning District.
6. The project site has a total of nine parking spaces existing on the subject site.
7. The parking available is provided on different legal lots from the use, immediately abutting the shelter site and facing onto N. 5th Street.
8. The City of San Jose owns all of the lots that are part of the site in the subject application and will insure that parking is provided for the life of the use.
9. Environmental Review for this project is covered by the Civic Center Garage Plan SEIR, approved by the City Council on September 2, 2003, which is EIR Resolution #71732.

This Planning Commission concludes and finds, based upon an analysis of the above facts that:

1. The project is consistent with the site's General Plan Land Use Designation of Public/Quasi-Public.
2. Parking will be provided for the proposed emergency shelter through an off-site parking arrangement on property owned by the City of San Jose.
3. The proposed project complies with all applicable provisions of the Zoning Ordinance.
4. The proposed project is in compliance with the California Environmental Quality Act.

Finally, based upon the above-stated findings and subject to the conditions set forth below, the Planning Commission finds that:

1. The proposed use at the location requested will not:
 - a. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area; or
 - b. Impair the utility or value of property of other persons located in the vicinity of the site; or
 - c. Be detrimental to public health, safety or general welfare; and
2. The proposed site is adequate in size and shape to accommodate the yards, walls, fences, parking and loading facilities, landscaping and other development features prescribed in this title, or as is otherwise required in order to integrate said use with the uses in the surrounding areas; and
3. The proposed site is adequately served:
 - a. By highways or streets of sufficient width and improved as necessary to carry the kind and quality of traffic such use would generate; and
 - b. By other public or private service facilities as are required.

- c. The alternating use and off-site parking arrangement is appropriate for the site, in that:
- 1) The number of off-street parking spaces provided in such parking facilities adequately meets the parking requirements of the individual buildings and uses as specified in Chapter 20.90 of the Zoning Ordinance;
 - 2) It is reasonably certain that the parking facility shall continue to be provided and maintained at the same location for the service of the building or use for which the such facility is required, during the life of the building or use; and
 - 3) The parking facility is reasonably convenient and accessible to the buildings or uses to be served.

In accordance with the findings set forth above, a Conditional Use Permit to use the subject property for said purpose specified above and subject to each and all of the conditions hereinafter set forth is hereby granted. This Planning Commission expressly declares that it would not have granted this permit except upon and subject to each and all of said conditions, each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property, and all persons who use the subject property for the use conditionally permitted hereby.

CONDITIONS PRECEDENT

This Conditional Use Permit shall have no force or effect and the subject property shall not be used for the hereby permitted uses unless and until all things required by the below-enumerated precedent conditions shall have been performed or caused to be performed and this Resolution has been recorded with the County Recorder.

1. **Acceptance and Payment of Recording Fees.** The "Acceptance of Permit and Conditions" form shall be **signed, notarized, and returned** to the Department of City Planning within **60 days** from the date of issuance of the resolution granting the permit. *Failure to do so will result in this permit automatically expiring regardless of any other expiration date contained in this permit.* Fees for recording a Certificate of Permit with the Recorder for the County of Santa Clara must be submitted along with the Acceptance Form.

CONCURRENT CONDITIONS

The subject property shall be maintained and utilized in compliance with the below-enumerated conditions throughout the life of the permit:

1. **Conformance with Plans.** Construction and development shall conform to approved development plans entitled, "Our House Temporary Youth Shelter" dated October 15, 2003, on file with the Department of Planning, Building and Code Enforcement, and to the San José Building Code (San José Municipal Code, Title 24).
2. **Nuisance.** This use shall be operated in a manner which does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City.

3. **Outside Storage.** No outside storage is permitted for the project. Storage shall occur only in areas within the building as designated on the approved plan set.
4. **Colors and Materials.** All building colors and materials are to be those specified on the approved plan set.
5. **Off-site Parking Arrangement.** Parking spaces located on all legal lots within the site shall be available to the emergency shelter.
6. **Building Clearance for Issuing Permits.** Prior to the issuance of a Building Permit, the following requirements must be met to the satisfaction of the Chief Building Official:
 - a. *Construction Plans.* This Permit file number, CP03-072 shall be printed on all construction plans submitted to the Building Division.
 - b. *Americans With Disabilities Act.* The applicant shall provide appropriate access as required by the Americans With Disabilities Act (ADA).
 - c. *Emergency Address Card.* The project developer shall file an Emergency Address Card, Form 200-14, with the City of San José Police Department.
7. **Public Works Clearance.** A Development Clearance shall be obtained from the Public Works Department, Room 308, (408) 277-5161, and is subject to the following requirements (3-16618) to the satisfaction of the Director of Public Works:
 - a. *Minor Improvement Permit:* The public improvements conditioned as part of this permit require the execution of a Minor Street Improvement Permit that guarantees the completion of the public improvements to the satisfaction of the Director of Public Works. This permit includes privately engineered plans, insurance, surety deposit, and engineering and inspection fees.
 - b. *Grading/Geology:*
 - i. A grading permit is required prior to the issuance of a Public Works Clearance. The construction operation shall control the discharge of pollutants (sediments) to the storm drain system from the site. An erosion control plan may be required with the grading application.
 - ii. The Project site is within the State of California Seismic Hazard Zone. A soil investigation report addressing the potential hazard of liquefaction must be submitted to, reviewed and approved by the City Geologist prior to issuance of a grading permit or Public Works Clearance. The investigation should be consistent with the guidelines published by the State of California (CDMG Special Publication 117) and the Southern California Earthquake Center ("SCEC" report). A recommended depth of 50 feet should be explored and evaluated in the investigation.
 - c. *Sewage Fees:* In accordance with City Ordinance all storm sewer area fees, sanitary sewer connection fees, and sewage treatment plant connection fees, less previous credits, are due and payable.

- d. *Undergrounding:* In the event that any future development will increase the intensity of use of the property, the In Lieu Undergrounding Fee shall be paid to the City for all frontage adjacent to N 4th Street prior to issuance of a Public Works clearance. (Currently, the base fee is \$224 per linear foot of frontage.)
 - e. *Street Improvements:*
 - i. Applicant shall be responsible to remove and replace curb, gutter, and sidewalk damaged during construction of the proposed project.
 - ii. Remove and replace broken or uplifted curb, gutter, and sidewalk along project frontage.
 - iii. Repair, overlay, or reconstruction of asphalt pavement may be required. The existing pavement will be evaluated with the street improvement plans and any necessary pavement restoration will be included as part of the final street improvement plans.
 - f. *Electrical:* The electroliers will be evaluated at the improvement plan stage to determine any additional electrical requirements.
 - g. *Landscape:*
 - i. Install street trees within the public right-of-way along the entire street frontage per City standards.
 - ii. The locations of the street trees will be determined at the street improvement stage. Street trees shown on this permit are conceptual only.
 - iii. Contact the City Arborist at (408) 277-2756 for the designated street tree.
8. **Fire Flow.** The minimum fire flow requirement for the site is 2,000 gallons/minute. The needed fire flow shall be provided from a minimum of two hydrants, spaced an average of 450 feet away from the proposed project.
9. **Fire Lanes.** Fire lanes shall be suitably marked with standard signs, painted curbs, and/or other markers as approved or authorized for use by the Chief. Fire lane markings shall be indicated on plans submitted through the building permit process for review and approval by the Fire Department.
10. **Fire Access, Locked Gates.** Each locked gate on site shall have an approved device with unlocking capability. Contact the Fire Department's Bureau of Fire Prevention at (408) 277-4656 for approved devices. Provide a manual means of opening gate if there is a power failure.
11. **Shelter Management Plan.** Operation of the emergency residential shelter shall be in accordance with the shelter management plan, "Emergency Housing Consortium - Our House – Service Management Plan," received 12/03/03, on file with the Department of Planning, Building, and Code Enforcement. Modification of the management plan shall require Amendment of this Permit.

CONDITIONS SUBSEQUENT

1. **Permit Expiration.** This Conditional Use Permit shall automatically expire two years from and after the date of adoption of the Resolution by the Planning Commission, or by the City Council on appeal,

granting this Permit, if within such two-year period, the proposed use of this site has not commenced, pursuant to and in accordance with the provisions of this Conditional Use Permit. The date of adoption is the date the Resolution granting this Conditional Use Permit is approved by the Planning Commission. However, the Director of Planning may approve a Permit Adjustment to extend the validity of this Permit for a period of up to two years. The Permit Adjustment must be approved prior to the expiration of this Permit.

2. **Revocation, Suspension, Modification.** This Conditional Use Permit may be revoked, suspended or modified by the Planning Commission, or by the City Council on appeal, at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 3, Chapter 20.44, Title 20 of the San José Municipal Code it finds:
 - a. A violation of any conditions of the Conditional Use Permit was not abated, corrected or rectified within the time specified on the notice of violation; or
 - b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or
 - c. The use as presently conducted creates a nuisance.
3. **Permit Conclusion.** This Conditional Use Permit expires and has no further force or effect 120 days after a Certificate of Occupancy is granted for the EHC's permanent emergency residential shelter at the northeast corner of S. Third and William Streets. Temporary modular trailers shall be removed from the subject site within 180 days after a Certificate of Occupancy is granted.